

## **Exhibit 10:**

### **Overcount of Belated Documents**

## **APPENDIX OVERCOUNT**

Although the government disclosed 1033 documents and physical items to the defense in May 2001, we found that number overstated the true number of documents that had not been properly disclosed to the defense. The overcount was caused for a number of reasons:

### **A. Documents were timely disclosed pretrial**

Some documents were not belated at all because they had actually been properly disclosed to the defense before the defendants' trials. Because of the complexities inherent in the database used to track OKBOMB documents and the speed of the search for the documents in the database, some documents were erroneously assumed to have not been disclosed. Subsequent and more thorough investigation revealed that they had been disclosed properly. For example, one of Phoenix's belated inserts had been disclosed timely as had an insert concerning vehicle tag numbers from Sacramento, California. An analysis completed by the prosecutors noted that an insert found in an FBI Headquarters office and disclosed to the defense as part of the second wave of belated documents had in fact been disclosed in 1996 and was inadvertently included in the documents given to the defense in May 2001.<sup>1</sup> We found that at least 14 of the belated documents had been properly disclosed before trial.

### **B. Duplicates**

Twenty-four documents are duplicates and so were counted twice. For example, the same FD-302 was counted as being belated both from Indianapolis and Detroit. Denver had a first wave belated document that is identical to a Denver second wave belated document. A photograph sent from St. Louis to Paris and San Juan was counted as a belated document three times. We show a graphic of this as Example #1 in this Appendix.

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<sup>1</sup> The FBI officials supervising the process of examining the documents told us that if they had more time to analyze the belated documents, they likely would have found others that had in fact been disclosed to the defense in a timely fashion. Given our experience with OKBOMB's database, ZyIndex, we believe that is likely an accurate assessment.

### **C. Belated 1 A Envelopes Contained Documents that had been Disclosed Timely**

The 1A envelopes gave rise to another overcounting problem. In some instances, the 1A envelope and its contents were considered belated even though the contents had in fact been disclosed timely to the defense. This occurred when an office placed FD-302s from another office into 1A envelopes. For example, Dallas sent an FD-302 and an insert to the OKBOMB Task Force and to other offices, including New Orleans. New Orleans placed the FD-302 and insert in a 1A envelope. The 1A envelope and its contents were considered as New Orleans belated documents even though the contents – the Dallas FD-302 – had been disclosed to the defense. We show a graphic of this at Example #2 in this Appendix. A Mobile belated 1A contains a composite drawing sent to the field offices by the OKBOMB Task Force during the OKBOMB investigation.

### **D. Belated Documents Similar to Documents Previously Disclosed**

Another related problem arises from similar but not identical documents. In 14 cases, we found FD-302s that had been disclosed to the defense that differed from the belated document by only a few words, such as the spelling of T-shirt (tee shirt) or the use of names instead of pronouns (Smith v. he).

These situations usually resulted from agents recreating documents that already existed and from draft documents. On occasion the Task Force did not receive an FD-302, requested that the field office send one, and the field office created a new FD-302 that was sent to the Task Force rather than sending the one that already existed. When the field office files were reviewed in Oklahoma City, the FD-302 that had never been sent was deemed to be belated even though it varied only slightly from the FD-302 that had been disclosed to the defense. Another example is a San Francisco insert that was considered to be a belated second wave document. According to San Francisco, the insert was a draft that was turned into an FD-302 by the agent. The FD-302 was submitted and disclosed to the defense, but the draft insert remained in the agent's working folder. It was deemed to be belated after the working files were reviewed as part of the second wave. However, because draft documents were never considered to

be discoverable, we do not believe it should be counted as one of the belated documents.<sup>2</sup>

#### **E. Belated Documents that would not have been Discoverable**

Some documents involved unrelated cases or categories of documents that were not discoverable. In some instances, the belated items were so unrelated to the OKBOMB investigation or could not reasonably be construed as “investigative” material that they should not have been disclosed to the OKBOMB defendants in 2001 and should not have been counted as belated documents. For example, material found in a Salt Lake City 1A consisted of 183 pages of items sent to the FBI by a citizen. The items included newspaper articles about the bombing and an extensive collection of song lyrics.

An example of this problem is a Portland insert that was counted as part of the second wave. The belated document was originally sent to Oklahoma City by Portland in the first wave. One of the searchers reviewing the first wave materials did not believe it should be considered as a problem document because it concerned an unrelated bank robbery and was probably only put in the Portland Auxiliary Office file for information purposes.<sup>3</sup> However, as part of the first wave review process, on May 15, 2001, the Dallas Field Office sent 25 pages of Portland inserts back to Portland. That fax, including the insert that the first wave searcher had determined should not be considered a belated document, was sent back to Oklahoma City as part of the second wave. Because the second wave searchers were not making the same distinctions that the first wave searcher had made, the insert was considered to be a belated document.

As another example, an item somewhat similar in appearance to an insert was found in the warehouse in Oklahoma City and was construed to

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<sup>2</sup> Although we did not analyze the second wave documents to the same extent that we did the first wave documents, we suspect this problem likely occurred in even more documents in the second wave. In May 2001, the field offices were sending to Oklahoma City agents’ “working files,” i.e. copies that individual agents maintained in their desks apart from the official Auxiliary Office file. Therefore, the second wave may contain many “similar but not identical” versions, such as drafts, of documents that were disclosed.

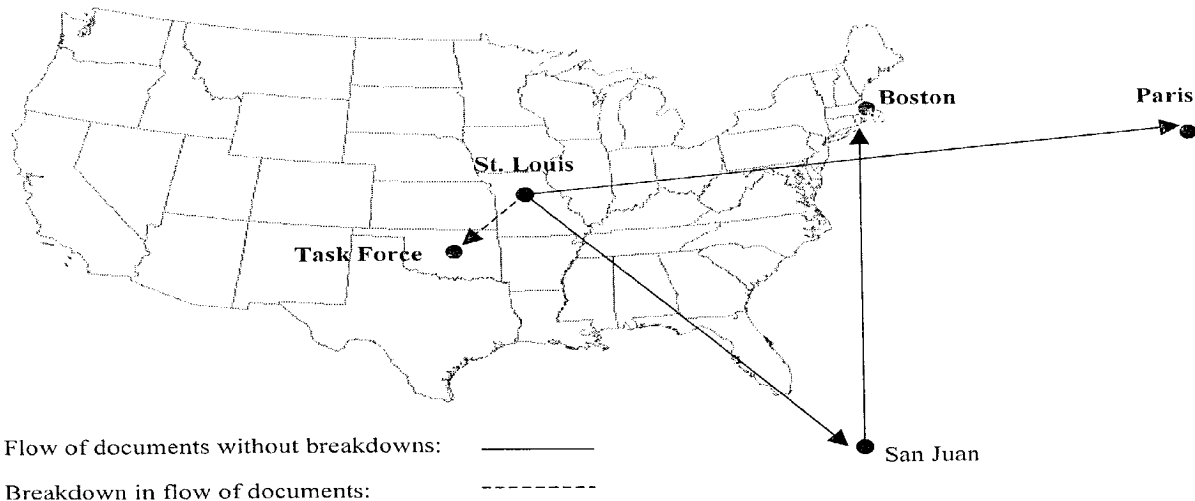
<sup>3</sup> The suspect arrested for the robbery had in his pockets three newspaper articles about the Oklahoma City bombing.

be a belated document. However, in actuality, the item is the second page of an EC, not an insert. ECs were not turned over as part of the OKBOMB discovery process.

Because we did not have extensive knowledge of the details of the OKBOMB investigation, we were unable to determine the exact number of documents that might reasonably be judged to be unrelated to OKBOMB and therefore not discoverable.

## Example #1 Photograph Counted as a Belated Document Three Times

**Purpose:** This example illustrates how a photograph of a potential John Doe 2 suspect was counted as a belated document three times.



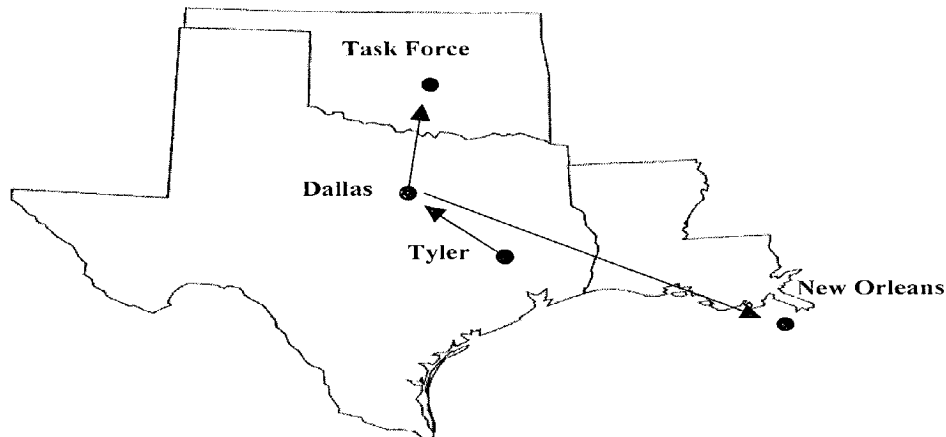
**St. Louis Field Office and the Task Force:** St. Louis sent an airtel to the Task Force, Legat Paris, and the San Juan Field Office stating that the photograph of “CPD” (a possible John Doe 2 suspect) was enclosed. In 2001 the photograph could not be located in the Task Force file and was subsequently identified as a St. Louis belated document.

**Legat Paris:** Paris placed the photograph in a 1A envelope, which was placed in its OKBOMB file. When Paris sent its OKBOMB file to Oklahoma City in 2001, the searchers could not find a reference to the Paris 1A envelope in the OKBOMB database and counted it as a Paris belated document.

**San Juan and Boston Field Offices:** San Juan sent Boston a copy of the photograph for further investigation. Boston placed the photograph in its OKBOMB file. When Boston sent its OKBOMB file to Oklahoma City in 2001, the searchers could not find a reference to the photograph in the OKBOMB database and counted it as a Boston belated document.

## Example #2

**Purpose:** This example illustrates how a 1A envelope and its contents were counted as belated even though the contents had been disclosed to the defense.



**Tyler Resident Agency (RA):** Agent assigned to Tyler RA interviewed “MLH” concerning “JPC” who advocated the violent overthrow of the United States Government. Agent forwarded original interview notes and criminal history of “JPC” to Dallas, the Headquarters City.

**Dallas Field Office:** Dallas sent an airtel to the Task Force with the FD-302 of the “MLH” interview, an insert pertaining to “JPC’s” criminal history, and a 1A envelope containing the interview notes. Dallas also sent two copies each of the interview and insert to New Orleans to conduct further investigation because the witness had some connection to a town in Louisiana.

**New Orleans Field Office:** New Orleans placed the copies of the FD-302 and insert in a 1A envelope, which was placed in its OKBOMB file.

**Task Force:** The FD-302 and insert from Dallas were placed in the Task Force file and disclosed to the defense. In 2001, the searchers did not check the contents of the New Orleans 1A envelope to determine if the contents had been disclosed previously. Rather, when the searchers could not find a reference to the specific New Orleans 1A envelope in the OKBOMB database, they counted it as belated even though its contents had in fact been disclosed to the defense.

**Exhibit 11:**

Sample FD-209



# Memorandum



To : SAC DALLAS (270C-DL-73913) (FCIT) (P) Date 1/16/96

From : SA GLENN C. EDWARDS

Subject: DL-5105-CW-DT

<b>Dates of Contact</b> <p style="text-align: center;">1/12/96</p>		
<b>File #s on which contacted (Use Titles if File #s not available)</b> <p style="text-align: center;">174A-OC-56120</p> <hr/> <hr/> <hr/>		
<b>Purpose and results of contact</b> <input type="checkbox"/> NEGATIVE <input checked="" type="checkbox"/> POSITIVE <input type="checkbox"/> STATISTIC		
<b>Description of Statistical Accomplishment</b>	<b>Title of Case</b>	<b>File No.</b>
<p>ENTERED CRMS            FD-209 DATE 1/30/96            INSERT DATE            FD-302 DATE</p> <p style="text-align: right;">270C-DL-73913, Sub A</p> <p>Information herein obtained confidentially; informant's name is not to be disclosed in a report or otherwise unless it has been decided definitely that this person is to be a witness in a trial or hearing.</p>		
<b>PERSONAL DATA</b>		
JAN 15 1996 A-30		

1 - 270C-DL-73913 1 - 270C-DL-73913A 2 - 174A-OC-56120

## **Exhibit 12:**

December 20, 2000, EC from Shackelford

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 12/20/2000  
12/20/2000

To: All Field Offices

Attn: Administrative Officer

From: Information Resources

Information Management/File Services/Room 1B327-Box 20  
Contact: William Shackelford, Extension 6903

Approved By: Pickard Thomas J  
Dies Bobby Edward  
Weaver Dennis R  
Hardy Nora R

*TSP*  
*BE*  
*DR*  
*NRA*

*Hammer*  
*Arasmita*

Drafted By: Shackelford William

Case ID #: 66F-HQ-1186292 - 12SS  
174A-OC-56120 - 10731

Title: DESTRUCTION OF FIELD FILES AND RECORDS  
OKBOMB  
MAJOR CASE 117

Synopsis: NARA approved authority to destroy Lead Office (LO) case files pertaining to OKBOMB.

Administrative: Reference Manual of Administrative Operations and Procedures (MAOP), Part II, Section 2-4.5.2

Details: As the result of inquiries received from several field offices, disposition authority was sought from the National Archives and Records Administration (NARA) to permit destruction of LO case files relative to the investigation of the "Bombing of the Alfred P. Murrah Federal Building; Oklahoma City, Oklahoma; April 19, 1995" (OKBOMB; Major Case 117; 174A-OC-56120).

NARA has responded favorably and has provided the FBI with limited destruction authority. Therefore, upon receipt of this communication, field offices are authorized to destroy OKBOMB related LO case files after observance of the instructions and restrictions set forth below. This decision, by NARA, is consistent with the current policy pertaining to the destruction of existing LO cases as set forth in MAOP, Part II, Section 2-4.5.2, (2) and (4).

NARA has noted that many of the OKBOMB documents have been uploaded by the either the Oklahoma City (OC) or the various LO and the text is easily retrievable through Automated Case Support (ACS) System. Therefore, once the LO has determined

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To: All Field Offices From: Information Resources  
Re: 66F-HQ-1186292, 12/18/2000

which documents have been uploaded into ACS, the document(s) may be destroyed unless one of the following circumstances exist:

- 1) Substantive notes which are discoverable have been written on the uploaded communication;
- 2) Enclosures are attached which have not been uploaded;
- 3) Additional indexing is indicated;
- 4) Photographs or other material not able to be uploaded is attached, or
- 5) Documentary or physical evidence exists;
- 6) Any communication which was not uploaded, including all communications received by the LO from outside of the FBI.

Documents which meet the above criteria, as well as original FD-302s, laboratory reports, latent fingerprint reports, original surveillance logs, agents' investigative notes, original photographs and other original documents maintained in the 1-A exhibit section of lead office case files are to be prepared for forwarding to the office of origin. Form FD-491 (Transmittal of Original Documents to Office of Origin) may be used for this purpose.

However, in order to avoid inundating OC with the filing of LO material, all field offices are to retain material identified by the LO but are not to forward any LO material to OC without specific instructions from either FBIHQ or OC.

The destruction guidelines set forth in this communication are consistent with the Bureau's paperwork reduction initiatives and eliminates, where possible, retention, maintenance and processing of unnecessary paper records. All offices should ensure that statistics are maintained for record material destroyed.

Any inquiries regarding the instructions set forth herein should be directed to either Mr. William Shackelford, Archives Specialist, FBIHQ, Extension 6903 or Ms. Dorris Arrasmith, OC File Supervisor.

To: All Field Offices from  
Re: 66F-HQ-1186292, 12/18/2000

LEAD(s):

Set Lead 1:

ALL RECEIVING OFFICES

Review OKHOMB related LO case file and identify all material which meets the criteria for forwarding to OC. Prepare Form FD-491 (Transmittal of Original Documents to Office of Origin) for this purpose.

Set Lead 2:

ALL RECEIVING OFFICES

Determine volume of LO case file material which is to be forwarded to OC and advise by electronic communication the OC File Supervisor.

Set Lead 3:

OKLAHOMA CITY

AT OKLAHOMA CITY, OKLAHOMA

Upon notification from each LO of volume of case file material to be forwarded, allocate sufficient resources to file material with Office of Origin 174A-OC-56120.

Set Lead 4:

OKLAHOMA CITY

AT OKLAHOMA CITY, OKLAHOMA

Maintain LO case file material as separate sub files to Office of Origin 174A-OC-56120. Do not integrate LO material into main file volumes of Office of Origin case file.

cc: 1 - Mr. Dies, Room 9939  
1 - Mr. Weaver, Room 9998  
1 - Ms. Hardy, South Pickett Street - Building 841  
1 - Mr. Shackelford, Room 1B327-Box 20  
1 - Mrs. Roundtree, Room 4933  
1 - Mrs. Cummins, Room 4933

**Exhibit 13:**

January 30, 2001, EC from Richmond

FEDERAL BUREAU OF INVESTIGATION

Precedence: IMMEDIATE

Date: 01/30/2001  
01 30 2001

To: All Field Offices  
Information Resources

Attn: Administrative Officer  
Information Management/  
File Services  
Room 1B327-Box 10  
William Shackelford

From: Oklahoma City  
Squad 4  
Contact: IRS Peggy W. Richmond

Approved By: Teater William E

Drafted By: Richmond Peggy W: pwr pur

Case ID #: 66F-HQ-1186292-1266  
174A-OC-56120-192 (Pending)

Title: DESTRUCTION OF FIELD FILES AND RECORDS  
OKBOMB  
MAJOR CASE 117  
10740 10753

Synopsis: Oklahoma City requests complete files be sent to Oklahoma City.

Reference: 66F-HQ-1186292 Serial 1255  
174A-OC-56120 Serial 10731

Details: Due to review of files received thus far and the delicate nature of the case, Oklahoma City desires to evaluate files prior to their being destroyed. Oklahoma City is requesting complete files be furnished and Oklahoma City will handle destruction.

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01/30/01 PK2

CC 667-OC-AUGUST-36

LEAD(s):

Set Lead 1:

ALL RECEIVING OFFICES

Forward complete files to Oklahoma City, Attention: IRS Peggy Richmond, x 3983 or FA Linda Vernon, x 3985, contacting Oklahoma City prior to transmitting.

Field Offices not having OKBOMB related material are requested to provide Oklahoma City an EC advising no OKBOMB documents have been retained in those divisions.

Oklahoma City Division understands the time and effort expended by the field offices to handle the OKBOMB files and wishes to express our appreciation to each of you for all the assistance provided in the past and that being provided at this time.

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